THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.4904 OF 2006

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Dated: 13-03-2006

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Between

Sarwar Ali Khan,

S/o. Mohammad Khadar Khan,

Occ: Business, R/o.16-4-33,

Chanchalguda, Hyderabad.

…PETITIONER

AND

Municipal Corporation of Hyderabad,

Rep. by its Commissioner, Tank Bund,

Hyderabad and another.

…RESPONDENT

ORDER:

Petitioner seeks a Writ of Mandamus to declare the notice dated 10-03-2006 in letter No.116/ACP/TPS/C1/MCH/2006 issued by the respondent under Section 636 of the Hyderabad Municipal Corporations Act, 1955 (for short 'the Act') to pull down the structures in the cellar within 3 days as illegal and arbitrary.

Heard the learned counsel appearing for the petitioner as well as the learned standing counsel appearing for the respondent.

Learned counsel for the petitioner submits that the property bearing No.10-11-741/1/A/A Malakpet, Hyderabad originally belonged to one Mr. Ahmadullah Khan, who entered in a development agreement with the petitioner for construction of a building by demolishing the existing old structure after obtaining permission from the municipal corporation vide permit No.80/38/97 in File No.741/11/16/97 dated 09.09.1997 for ground + two upper floors. Petitioner just put a shutter in the cellar portion as it is butting the main road.

While so, the respondent without issuing any show cause notice, issued a notice in letter No.116/ACP/TPS/C1/MCH/2006,
dated 10-03-2006 under Section 636 of Hyderabad Municipal Corporation Act, 1955, stating that the petitioner has made constructions not covered by the sanctioned plan and converted parking space in cellar floor other than parking and carried out the said construction which is unauthorized and causing lot of inconvenience to the inmates in the building and also to the visitors of the building, resulting in vehicles being parked on the road, creating lot of traffic congestion, accident and public nuisance and also that the High Court in suo-motto contempt case in C.C.No.101 of 1996, dated 28-02-1996 ordered that steps be taken immediately for creation for parking areas with a view to reduce traffic congestion being created on account of cars being parked on roads for want of parking within the premises. Accordingly, the petitioner was directed to remove the said unauthorized structure within three days.

I am of the opinion that issuing notice under Section 636 of the Hyderabad Municipal Corporation Act, 1955 is in respect of the buildings, which have been constructed after obtaining permission for construction of the cellar, ground floor and upper floors, the relevant provision to issue a notice is under Section 452 of the Act. If that is the case, it is for the respondents to point out whether the petitioners have converted the parking place into shops. If there is any deviation or conversion, it is for the respondents to issue a show cause notice under Section 452 of the Act. But, without issuing any show cause notice, straight away a notice under Section 636 of the Act, as if the constructions have been made without any permission, has been issued directing the petitioner to remove the structures.

Having regard to the facts and circumstances of the case,

the impugned notice dated 10-03-2006 in Lr.No.116/ACP/TPS/C1/MCH/2006 is directed to be treated as a show cause notice only permitting the petitioner to file a representation/explanation within one week from the date of receipt of a copy of this order and till such representation/explanation is considered and appropriate orders are passed and communicated to the petitioner, the respondents shall not remove or demolish the premises of the petitioner.

The writ petition is disposed of accordingly.

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V.ESWARAIAH, J

March 13, 2006

Note: Furnish C.C. of the order by 14.03.2006

(**B/o**)

DSK